

## CHAPTER 1

# Introduction

---

### **This Chapter:**

- C Provides a perspective on the Federal acquisition process, and the place of simplified acquisitions and ordering from established sources within it, by defining terms and surveying applicable laws and regulations (Section 1A).
- C Surveys the key tasks and the scope of authority of the program and acquisition personnel who are responsible for simplified acquisitions, ordering from established sources, and presents standards for their conduct (Section 1B).
- C Discusses the rules regarding standards of conduct, conflicts of interest, contractor gratuities and contracts with government employees and former government employees and places special emphasis on the responsibilities of Purchasing Agents (Section 1C).

### **Cross-Reference**

- C Chapter 3 provides perspective on the complementary roles of program and purchasing personnel by discussing the potential for purchasing activity involvement in acquisition planning and other areas outside its immediate acquisition support role.
- C Chapter 3 also discusses areas in which both purchasing and program personnel have responsibility by discussing planning for individual purchase transactions and steps in preparing and reviewing requisitions.

## **SECTION 1A**

### **PERSPECTIVE**

The ARS mission is broad, often requiring substantial scientific and professional expertise for implementation. Successful achievement of ARS goals also requires a high degree of expertise and professionalism from administrative and support personnel.

This chapter of Field Acquisition Manual 213.2 is intended to provide an overview of the framework within which a Purchasing Agent must operate. This framework consists not only of rules and regulations but of roles and relationships, responsibilities to the ARS as well as USDA, and accountability to the public.

Throughout, the Manual addresses the responsibilities of Purchasing Agents who are the personnel directly responsible for placing orders and making buys through simplified small purchase techniques. Much of the coverage bears on the concerns of the program or project personnel who initiate requirements and use the goods and services acquired. As a whole, the manual provides orientation and guidance regarding ARS policies and established procedures. Its organization reflects, to the extent feasible, the actual flow of requirements: from the development and receipt of requisitions, through the processes of placing orders or effecting contracts, and on through the follow-up, inspection, acceptance, and closeout stages.

This initial chapter is intended to describe the framework within which the processes of ordering from established sources and making simplified acquisitions take place. This section broadly delineates that framework by surveying laws, regulations, and policies and by defining key terms and issues.

### **SIMPLIFIED ACQUISITIONS AND ORDERS FROM ESTABLISHED SOURCES WITHIN THE OVERALL ACQUISITION CONTEXT**

#### **Definition and Comparison of Terms**

The terms used to describe the processes of acquiring goods and services for government use are changing as those processes themselves undergo reform. The definitions and explanations which follow reflect the usage of the terms in this text.

The Federal Acquisition Regulation (FAR 2.1) defines *acquisition* as "acquiring by contract with appropriated funds of supplies or services (including construction) by and for the use of the Federal Government through purchase or lease, whether the supplies or services are already in existence or must be created, developed, demonstrated, and evaluated. Acquisition begins at the point when agency needs are established and includes the description of requirements to satisfy agency needs, solicitation and selection of sources, award of contracts, contract financing, contract performance, contract administration, and those technical and management functions directly related to the process of fulfilling agency needs by contract." In this text, *acquisition* is an inclusive term for all actions taken in getting what the government needs to where it is needed, when it is needed--as economically as possible, and in compliance with legal and

administrative requirements. It encompasses the description of requirements, the choice of sources, the effecting of a contract, and the administration of the contract. It also includes in its meaning the use of such established sources as inventory, excess property, consolidated buying programs, and indefinite delivery contracts.

Less comprehensive terms are used to indicate the procedures for buying from commercial or open market sources. The term simplified acquisition applies to open market buys not exceeding a specific dollar amount. FAR 2.101 defines simplified acquisition procedures as “the method prescribed in Part 13 for making purchases of supplies or services.” The procedures in Part 13 are for the acquisition of supplies and services, including construction, research and development and commercial items when the aggregate amount involved in any one transaction does not exceed the simplified acquisition threshold of \$100,000. Part 13 applies to open market acquisitions and authorizes the use of simplified techniques in making them. [It must be noted, however, that the authority of individuals to conduct simplified acquisitions may be restricted to a lower dollar amount, as discussed in Section 1B.] The term *contracting* generally refers to buys of goods or services for amounts above the dollar limitation for simplified acquisitions. These buys are made using formal contracting procedures.

The term *Purchasing Agent* refers, narrowly, to individuals who have been delegated authority to make open market buys within the stipulated dollar limit for simplified acquisitions. This term is commonly used more broadly--as it is used here--to designate individuals whose authority and responsibility encompass both the making of simplified acquisitions and the placing of orders with established sources within the dollar limits established by those sources.

### **Significance of the Simplified Procedures Authorized for Small Purchases**

Basically, simplified acquisition differs from contracting in the formality of the procedures used, the statutory or regulatory requirements which must be adhered to, and the forms and formats used. As discussed later in this Manual, a formal contract is a two-party, legally binding agreement between the buyer (the government) and a seller (the contractor). A purchase order placed using simplified acquisition procedures, on the other hand, is a unilateral document which conveys the government's offer to buy. If the seller accepts this offer, it also becomes a binding agreement and has the same force and effect as a formal contract.

The use of simplified acquisition procedures is important because they are designed to reduce administrative costs, expedite procurement of the needed items, and improve opportunities for small business concerns.

Because of their cost saving potential, simplified acquisitions are the subject of continuing interest on the part of Congress, the General Accounting Office, and other groups responsible for reviewing the efficiency and effectiveness of government acquisition operations. These groups have addressed not only the administrative savings available through the proper use of the simplified procedures, but also the potential for savings through obtaining adequate competition and through proper use of price analysis techniques.

### **Balance Between Open Market Purchasing and Ordering from Established Sources**

The overall efficiency and economy of the government acquisition process depends on the maintenance of a balance between reliance on established sources and reliance on purchase from open market commercial sources.

Purchasing Agents must help to maintain that balance by following a prescribed order or priority in using the various supply sources. Before going to a commercial source, they must first determine whether the goods or services needed are available from an established source of supply, and whether the use of that source is required in the given circumstances. (See Chapters 4 and 5 of this Manual).

## **APPLICABLE LAWS AND REGULATIONS**

### **Acquisition in General**

The basic legislation that governs government acquisition in the civilian agencies is the Federal Property and Administrative Services Act (FPASA) of 1949, as amended, and for the Department of Defense, the Armed Services Procurement Act. These laws are implemented by the Federal Acquisition Regulation (FAR), which is prepared, issued, and maintained jointly by the Secretary of Defense and the Administrators of NASA and the General Services Administration (GSA). The Department of Agriculture has established its own Department of Agriculture Acquisition Regulations (AGAR) to implement and supplement the FAR. These regulations cover the same areas as the FAR, but with more specific guidelines on certain topics. Also, the ARS issues directives applicable to the acquisition function. (See more detailed discussion in Chapter 2.)

The Federal Property Management Regulations (FPMR) in addition to the Federal Management Regulation (FMR), and the Agriculture Property Management Regulations (AGPMR) which implement and supplement them, also contain provisions which address activities--such as ordering from certain established sources--conducted by purchasing personnel.

Taken together, these Federal, departmental, and ARS sources provide an authoritative reference for uniform acquisition policies, systems, regulations, procedures, and delegations of authority. Each source is a part of the Code of Federal Regulations. The FAR forms Title 48, Chapter 1; the AGAR Chapter 4, Title 48; the FPMR, Chapter 101 of Title 41; FMR Chapters 101 and 102; and the AGPMR, Chapter 14 of Title 41.

### **Simplified Acquisitions**

The Federal and Agriculture Acquisition Regulations cover acquisition in general, with most of the emphasis on formal contracting.

There are certain portions in each, however, which give specific guidance for simplified acquisitions. FAR Part 13 and AGAR Part 413 for instance, are specifically devoted to "Simplified Acquisition Procedures." Additional guidance on purchasing and ordering from established sources can be found in other Parts as well as ARS Directives which are cited in this

Manual.

Only one of the eight FPMR/AGPMR subchapters, Subchapter E, deals with acquisition. In that Subchapter FPMR 101-25 and 101-26 and AGPMR 104-25 and 104-26 are of most concern to Purchasing Agents. Parts 101-25 and 104-25 contain general policy guidance on such matters as use standards for office furniture and equipment and guidelines for making lease versus purchase determinations. Specific guidance on buying from the GSA stock program is contained in 101-26. Although these subchapters are of prime importance, other subchapters of the FPMR concerning property management may have to be consulted as well.

### **Effect of Common Law on Acquisition**

The Federal Property and Administrative Services Act is an example of "statutory" law which has been enacted by legislature. "Law" can also be made through interpretation by the courts. The body of the law which is based on judicial precedent is called "common" or "case" law. Such law can be found only in written records of judicial decisions. These records tell how statutory law has been applied in a particular case.

Comptroller General decisions are probably the most familiar sources of common law reference for Purchasing Agents. The decisions of the Comptroller General are rendered daily. Those which the General Accounting Office (GAO) considers of greatest interest are published in quarterly digests which are later incorporated into bound volumes entitled *Decisions of the Comptroller General of the United States*. The majority of these decisions affect purchasing or contracting to some extent. In addition to the published decisions, unpublished decisions on five topics--civilian personnel law, military personnel law, procurement, general government matters, and transportation--are available.

Common law is also made through the contractor appeal process. A contractor may appeal a final decision rendered by a Contracting Officer (CO) on any disputed question of fact. The appeal may be made to either the Agriculture Board of Contract Appeals (AGBCA) or directly to the U.S. Claims Court. The decisions of the AGBCA (as well as other agency BCA's) and the Court also govern acquisition actions.

## **SECTION 1B**

### **RESPONSIBILITY AND AUTHORITY OF PARTICIPANTS IN THE ACQUISITION PROCESS**

ARS performs its missions and functions through the authority granted to its Administrator by the USDA Senior Procurement Executive who is also the Director, Office of Procurement and Property Management, and the Secretary of the Department of Agriculture. ARS' Administrator has, in turn, redelegated certain authority, including contracting authority--the acquisition of goods and services for accomplishing ARS's missions and functions. Purchasing Agents and other acquisition personnel have primary responsibility for ordering, purchasing, or contracting for what is needed. Program, project, and other technical personnel (referred to in this section as "program" personnel) also participate in the acquisition process.

The relationship of purchasing and program personnel in the purchasing process can be described in terms of a distinction between the "how" and the "what" of acquisition. The Purchasing Agent, as buyer, is accountable for "how" the acquisition is handled. The program person who initiates the requirement is responsible for establishing "what" is needed, obtaining necessary approvals, and describing the product or service.

The purpose of this section is to describe more fully the roles of program personnel and purchasing personnel in the kinds of acquisitions which are the subject of this Manual. The section delineates the scope of the authority exercised by each type of employee and highlights tasks and responsibilities which are treated in greater detail in the other chapters of this text.

### **ROLE AND AUTHORITY OF PROGRAM PERSONNEL**

ARS program personnel and the functions they perform are an integral part of the acquisition process. These personnel are responsible for:

- C Identifying requirements for goods and services;
- C Coordinating plans early on with the appropriate acquisition personnel;
- C Developing requisitions for individual requirements which clearly and adequately state what is needed and when, which contain an in-house cost estimate, a source of available funds, and other relevant information;
- C Providing technical guidance during the evaluation of suppliers; and
- C Assisting in the administration of the contracts formed.

ARS program personnel need not become experts in making acquisitions, for that is the role of

acquisition personnel, but they need to understand the limits of their authority, the actions required of them, and the connection between those actions and the actions of ARS acquisition personnel.

### **Requisitioning Authority**

Requisitioning authority is the authority to sign a written request for the issuance of stock or for an acquisition action, in order to carry out an approved program objective using authorized and available funds. This authority is separate and distinct from purchasing authority, which is the authority to take acquisition action, within prescribed procedures, in response to requisitions.

Only officials who have specific delegated authority for fund control possess requisitioning authority. These officials may delegate the authority to initiate and prepare requisitions to other responsible employees, but they must reserve for themselves (or a particular designee) the authority to sign these requisitions before they are sent to the purchasing activity. Their signature on a requisition constitutes certification that the request is for an approved project, that funds are available to pay for it, and that the goods or services are for public use.

A requisition is not an order but rather an internal document that describes what is needed and justifies the need. Once all necessary approvals and clearances have been obtained, the requisition authorizes an acquisition action.

Officials with authority to approve requisitions must be familiar with the review and clearance procedures required for acquisitions which are subject to statutory limitations, limited authorization, or special fund control. Many of these requirements are noted in Appendix III of this Manual.

Steps in preparing requisitions are discussed in Chapter 3.

### **Limits on Authority**

Program personnel may be called upon to render assistance and make technical judgments while quotes or offers are being solicited and evaluated and after the goods or services are received. They have *no* authority, however, to solicit quotes or offers, issue orders, modify contracts, conduct any government business with sources, or in any way obligate the government. Those functions are reserved exclusively for acquisition personnel.

## **ROLE AND AUTHORITY OF PURCHASING AGENTS**

Purchasing Agents are responsible for handling simplified acquisitions and ordering from established sources. Specifically, they are responsible for:

- C Determining the appropriate source of supply; if necessary, finding sufficient prospective commercial sources to obtain "reasonable" competition and satisfy socioeconomic and

- other requirements;
- C Advising sources of requirements;
- C Evaluating quotations and, where appropriate, conducting negotiations to obtain reasonable prices;
- C Preparing appropriate purchasing and ordering documents; and
- C Following through to see that end users receive what is needed, when and where it is needed, and assuring that appropriate documents are submitted so that final payment can be made.

The role of Purchasing Agent is a challenging one. Purchasing Agents need to exercise sound judgment in making the best buys, based on price and other factors, for their activities. Most Purchasing Agents need to be generalists, familiar with a wide assortment of commodities, industries, supply systems, and acquisition techniques. All must be familiar with a host of requirements and procedures--ranging from provisions of the regulations to the detailed instructions for using various systems, catalogs, and forms. Moreover, they must be able to recognize circumstances in which a complex requirement, or a requirement subject to special handling procedures, should be referred to a higher authority.

The authority of the Purchasing Agent is established as discussed below.

### **ARS CONTRACTING AND SIMPLIFIED ACQUISITION AUTHORITY**

Contracting and simplified acquisition authority, which was vested in the Administrator of the Agricultural Research Service by USDA's Director, Office of Procurement and Property Management, (USDA Senior Procurement Executive) has been redelegated to the Director of the Procurement and Property Division (PPD), who may redelegate this authority (without power of redelegation) with such additional constraints and instructions as may be desired.

Contracting authority cannot be delegated to employees responsible for inspection, and persons with contracting or simplified acquisition authority cannot take any action in an amount that would exceed the dollar limitation of that authority.

Redelegations may be made only to specific employees designated by name, not to "incumbents" of positions. Persons acting for contracting officers who are on leave, traveling, or otherwise absent from the office are prohibited from using the CO's delegated authority. Delegation of

contracting and simplified acquisition authority is made only to employees who have shown professional competence to exercise the broad authorities of a CO, and who meet certain prerequisites.

## **SIMPLIFIED ACQUISITION AUTHORITY AND AUTHORITY TO ACQUIRE FROM ESTABLISHED SOURCES**

As discussed above, contracting authority has been delegated to the Director of the ARS, PPD, who may redelegate contracting authority (without power of redelegation). For purpose of the exercise of authority under the FAR and AGAR, the Director, PPD, is referred to as the Head of Contracting Activity Designee (HCAD).

The Procurement Assistance Officers (PAOs) at the ARS Area offices and the Directors of PPD and the Facilities Division (FD) are responsible for effective and economic management and control of purchasing and contracting within their respective geographic and functional areas of responsibility. Exhibit 1B(i) presents the ARS Area Organization.

Exhibit 1B(ii) at the end of this section, "ARS Contracting and Simplified Acquisition Authority," presents an overview of the lines of delegated authority.

Exhibit 1B(iii) at the end of this section, "Delegation of Simplified Acquisition Authority," displays in greater detail the prerequisites for authority to conduct various kinds of simplified acquisitions.

## **LIMITATIONS ON THE AUTHORITY TO DELEGATE**

Employees delegated simplified acquisition authority are specifically prohibited from redelegating that authority by AGAR 401.603.

In accordance with FAR 1.603 all delegations of authority must be documented, with clear statements of any limitations or special instructions. They remain in effect until they are rescinded or until the employee vacates the position occupied at the time the delegation was made.

All delegations are reviewed at least annually by the delegating official to determine the need for continuance, modification, or revocation.

## **NEED FOR TEAMWORK**

Program and purchasing personnel play complementary roles in the acquisition process. The quality of the end products and services procured depends on efficiency at each step in the process. Full efficiency can result only from collaborative informed efforts on the part of all those involved.

### **Program/Project Personnel**

ARS's program and project personnel are an integral part of the acquisition team. As discussed earlier, these personnel and their functions have been included within the acquisition process--

and rightly so, for without them there would be no need for acquisitions. They have the program planning responsibilities and make the various requirements determinations that begin the acquisition process.

Program personnel are responsible for identifying requirements; for coordinating plans early on with the appropriate acquisition professional; and for developing the requisition package, which includes the specification or work statement, the funding source, the in-house cost estimate, and other relevant information. They also provide technical guidance during the evaluation of suppliers and assist in the administration of contracts and purchases.

### **Purchasing/Contracting Personnel**

The implementation and application of Federal acquisition policies and procedures is carried out through Area Procurement Assistance Officers and Contracting Personnel in PPD and FD who are responsible for assuring that each acquisition is handled consistently with applicable laws and regulations (See Exhibit 1B(i)).

Employees who have been delegated acquisition contracting authority in excess of \$100,000 are in the PPD, the FD, and the Area Offices. These employees normally handle open-market acquisitions in excess of \$100,000 and acquisitions of certain distinctive items that require special handling. They are referred to as COs.

### **Procurement Assistance Officers**

Procurement Assistance Officers (PAOs) in the Areas, contracting personnel in the PPD and FD are responsible for all acquisitions processed (regardless of method or dollar amount) within their area of jurisdiction. They are responsible for supporting the Agency's acquisition needs and assuring proper handling. These officers maintain an adequate staff of competent professional personnel to provide the support required by programs and projects. They also determine the level, consistent with organizational structure, at which acquisitions will be processed.

PAOs provide direction, leadership, guidance, and assistance to contract specialists and Purchasing Agents within their area of jurisdiction. They also serve as COs within their areas of jurisdiction. In addition, the PAO, in cooperation with the Area Administrative Officer (AAO), Location Leader, and Location Administrative Staff will review location simplified acquisition workload (see discussion of Advance Acquisition Plans in Chapter 3A), and available resources to assess the requirement for simplified acquisition authority, the appropriate dollar level, and the required qualifications of individuals. Where workload or other conditions indicate a delegation of authority is appropriate, and the Location Leader commits resources for such delegation, the PAO must ascertain the qualification of the individual(s) to meet delegation criteria. Where qualified individuals are available, a request for delegation from the HCAD can be initiated. Where qualified resources are not available, the PAO must recommend actions to qualify a resource for delegation or recruitment of qualified resources.

### **Contracting Personnel**

Contracting personnel provide support to program and project personnel by carrying out all

acquisitions in excess of the simplified acquisition threshold, and the acquisition of certain distinctive items that require special handling. The CO at headquarters and in each Area provides policy direction to Purchasing Agents. A CO is authorized to enter into, administer, or terminate contracts and make related determinations and findings (FAR 1.602-7).

*Note:* Only those ARS officials who have been delegated specific contracting authority can enter into and execute contracts on behalf of the government.

Employees appointed as COs are agents of the U.S. Government and must perform their duties in accordance with applicable laws, regulations, Executive Orders, Comptroller General decisions, and decisions of the courts and boards. In addition they must always operate within the constraints of their delegated authority. Many of the contracting officers' responsibilities involve duties and decisions which are exclusively reserved to them. In this capacity, they are directly responsible to the delegating official for the proper execution and administration of contracts and purchase orders. Moreover, as agents of the government, they are indirectly answerable for their contracting actions to many other agencies and officials within the government, such as ARS or Department Certifying Officers, the Comptroller General, and the Inspector General, as well as to their supervisors. Further, they are also responsible to the HCAD for ensuring the effectiveness and adequacy of procurement performance and providing support to ARS activities.

### **Field Acquisition Personnel**

Purchasing Agents are extensions of the PAOs and are among the most important members of the acquisition team. These agents are on the front line and handle over 70 percent of ARS' acquisition requirements each year.

As representatives of PAO's, they are responsible for supporting their activities' acquisition needs and assuring that acquisitions are processed according to proper law and regulations.

Once a purchase order has been issued and accepted by the contractor, it becomes a contract. In relation to that contract, the Purchasing Agent is a "contracting officer" who is also responsible for seeing that the contractor performs faithfully and within the schedule.

Purchasing Agents must plan for the needs of the activity they support. Their responsibilities include such functions as consolidating known needs, establishing sources for repetitive needs, acquiring contractor information on established sources, obtaining annual waivers, and establishing blanket purchase agreements.

## **RATIFICATION OF UNAUTHORIZED CONTRACT AWARDS**

Only COs acting within the scope of their authority (see FAR 1.602) may enter into contracts on behalf of the government. Further, Executive Order 12731, Principles of Ethical Conduct for Government Officers and Employees, provides that, "Employees shall make no unauthorized commitments or promises of any kind purporting to bind the government."

"Unauthorized commitment," as used in this section, means an agreement that is not binding solely because the government official who made it lacked the authority to enter into a contract on behalf of the government.

"Ratification," as used in FAR 1.602-3 and AGAR Subpart 401.602-3, means the act of approving an unauthorized commitment by an official who has the authority to do so, for the purpose of paying for supplies or services provided to and accepted by the government as a result of a previously unauthorized commitment.

### **Examples**

Examples of unauthorized commitments include:

- C Ordering supplies or services by an individual without contracting authority.
- C An individual with contracting authority ordering supplies or services exceeding their authority.
- C Unauthorized direction of work through assignment of orders or tasks.
- C Unauthorized addition of new work.
- C Any other direction which changes the terms and conditions of the contract.

### **Ratification Authority**

The Senior Procurement Executive, USDA, has authorized the Head of the Contracting Activity (HCA), who is the Administrator ARS, and the HCAD for Research, Education, and Economics (Director, PPD) to delegate ratification authority to individuals at the Chief of Contracting Office level. In accordance with REE Policies and Procedures 212.6, PAOs; Director of the FD; and Chiefs of Contracts Branch and Procurement and Property Branch, PPD have been delegated authority to ratify unauthorized contract actions up to \$100,000. Unauthorized contract actions above \$100,000 must still be approved at the HCAD level. Forms and sample letters are provided in the Policies and Procedures.

Subject to the limitations on exercise of authority discussed below, an unauthorized commitment may be ratified, provided:

- C The government has obtained a benefit resulting from the unauthorized commitment;
- C The individual with ratification authority could have granted authority to enter into the

commitment at the time it was made and still has the power to do so; and

- C The resulting contract would otherwise have been proper, if made by an authorized CO. As used herein, the phrase "otherwise proper" means that a ratification of an unauthorized commitment can be made only if there occurred no violation of any substantive legal requirements, e.g., there can be no ratification unless a sole source can be justified; a determination made that the contractor is not debarred or otherwise ineligible for award; the organizational conflict of interest reviews and determinations, if required, are completed; and where all other substantive legal requirements have been met.

### **Limitations of Exercise of Authority**

In accordance with FAR the authority discussed above may be exercised by the individual with ratification authority only if:

- C The supplies or services have been provided to and accepted by the government;
- C The price is determined to be fair and reasonable;
- C Payment is recommended;
- C Funds are available and were available at the time the unauthorized commitment was made; and
- C Administrative settlement of the unauthorized commitment would not involve a claim subject to resolution under the Contract Disputes Act of 1978.

### **Procedures**

Whenever it is discovered that any person or firm is performing work as a result of an unauthorized commitment, the circumstance must be immediately reported to the appropriate ratification official concerned (for the Purchasing Agent in the field, this means reporting immediately to the PAO who in turn must report to the HCAD (if the dollar value involved exceeds \$100,000)). The ratification officials actions include:

- C Immediately informing any person who is performing work as a result of an unauthorized commitment that the work is being performed at that person's risk;
- C Informing the person who made the unauthorized commitment of the seriousness of the act and the possible consequences;
- C Ensuring that the individual who made the unauthorized commitment furnishes all records and documents concerning the commitment and a complete, written statement of facts, including, but not limited to, a statement as to why the acquisition officer was not used, why the proposed contractor was selected and a list of other sources considered, description of work to be performed or products to be furnished, estimated or agreed contract price, citation of appropriation available, and a statement as to whether the contractor has commenced performance. Under exceptional circumstances, such as when the person who made the unauthorized commitment is no longer available to attest to the circumstances of the unauthorized commitment, the requirement may be waived;

- C Deciding whether ratification is proper and proceed as follows:
- If ratification is not justifiable, provide the cognizant contracting office and the unauthorized contractor with an explanation of the decision not to ratify.
  - If ratification appears justified and adequate, the ratification official may ratify the action, assign the file to a CO for action, and monitor the implementation of the corrective action plan.
  - A detailed record of the review must be maintained for audit purposes.

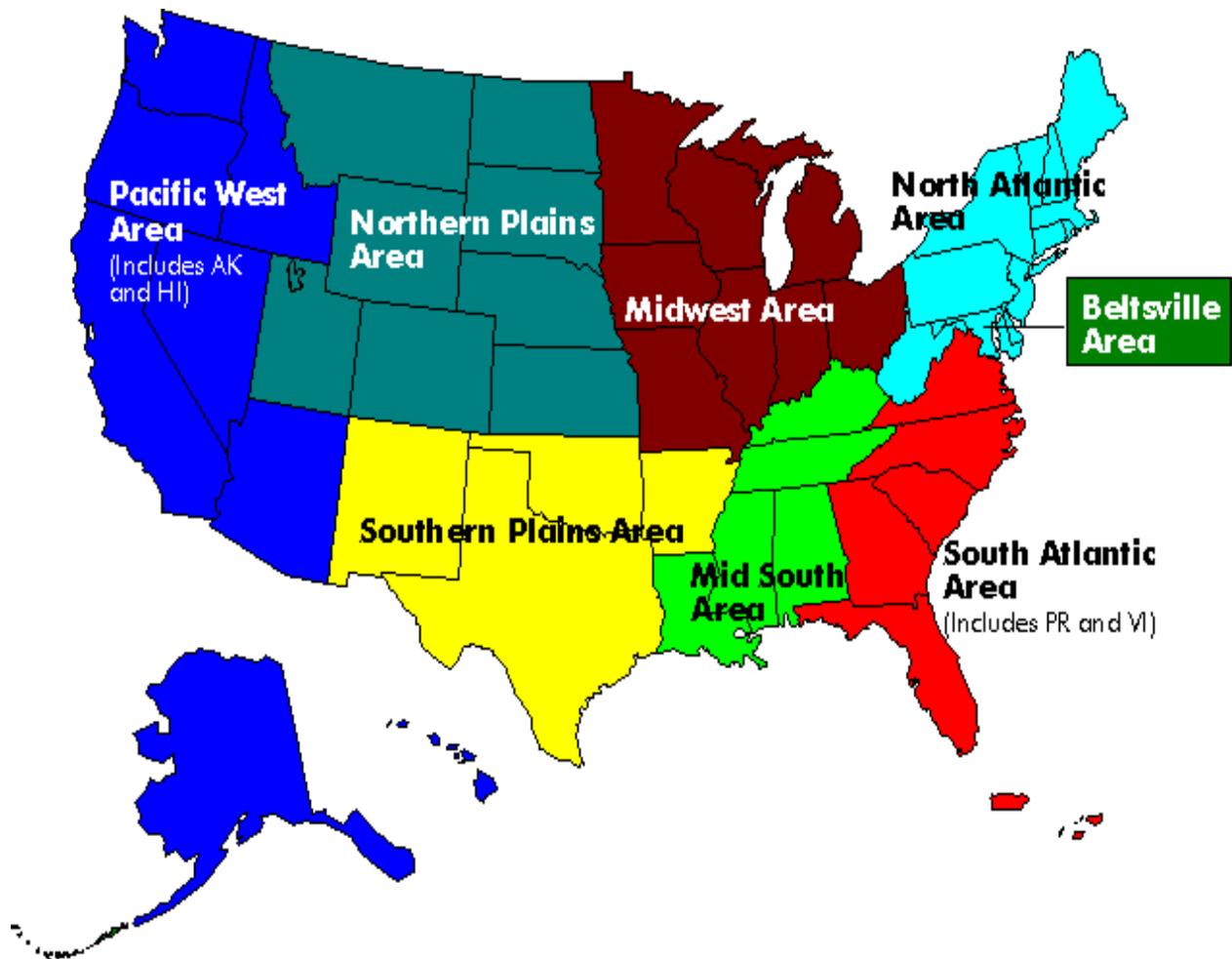
**Consequences**

Unauthorized awards are a direct violation of administrative regulations and could cause the employee responsible for unauthorized commitments to be subject to disciplinary measures.

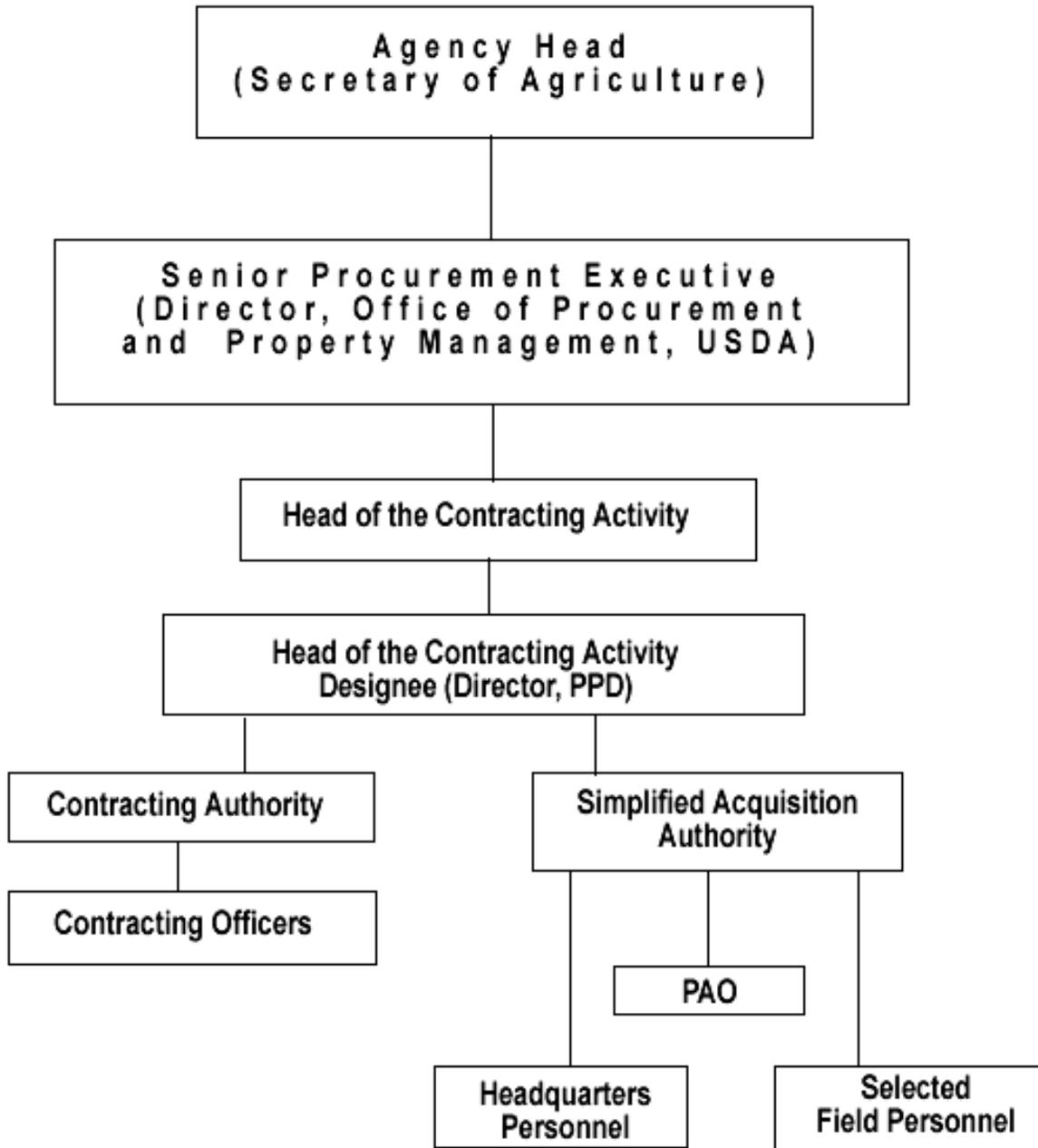
**CONSTRUCTIVE CHANGE**

Whereas "unauthorized commitment" is generally associated with circumstances where "contracts" were created, "constructive change" is associated with situations where a modification is made to a contract by the action or inaction of the government which the contractor "construes" as a change. Constructive changes, which seem to be much more prevalent in Construction contracts, are discussed in Section 14C.

**Exhibit 1B(i)**  
**ARS Area Organization**



**Exhibit 1B(ii)**  
**ARS Contracting and Simplified Acquisition Authority**



**Exhibit 1B(iii)**  
**Delegation of Simplified Acquisition Authority**

**LEVEL 1A - \$2,500**

**AUTHORITY:**

Obligation authority up to \$2,500 on the open market and \$2,500 on priced mandatory or nonmandatory FSS contracts or other schedule contracts for supplies and services.

**REQUIREMENTS:**

- C Experience--Six months recent experience in small purchases or simplified purchases.
- C Education--A high school diploma or equivalent.
- C Training--At time of appointment (delegation) successful completion of 40 hours training in government simplified acquisition procedures. (See DR5001-1 for subject matter).
- C Duties--Ten percent or more of time is regularly dedicated to purchasing duties.

**DESCRIPTION:**

Contracting up to \$2,500 is accomplished using the simplest procedures for acquiring goods or services. They normally do not involve competition and require only the obtaining of fair and reasonable prices for items or services which are normally available from local commercial retailers. Terms and conditions generally do not require modification nor the inclusion of additional applicable clauses.

Administration is normally simple as services are of short duration and goods are off-the-shelf commercial products.

**Exhibit 1B(iii) Continued**

**LEVEL 1B - \$10,000**

**AUTHORITY:**

Obligation authority up to \$10,000 on the open market purchase orders and up to the maximum order limitation (MOL) on priced mandatory or non-mandatory FSS or other schedule contracts for supplies and services. Delivery orders for FIP resources are limited to \$50,000.

**REQUIREMENTS:**

- C Experience--One year of acquisition experience, including 3 months recent experience in small purchases or simplified purchases.
- C Education--A high school diploma or equivalent.
- C Training--At time of appointment (delegation) successful completion of 60 hours training in government simplified acquisition procedures. (See DR 5001-1 for general and core subject matter).
- C Duties--Twenty-five percent or more of time is regularly dedicated to purchasing duties.

**DESCRIPTION:**

Contracting up to \$10,000 involves application of a large portion of the Federal Acquisition and related regulations. Competition or a Sole Source Justification signed by the CO is required. Many times goods are only available from vendors outside the local areas. Services and construction are subject to the Service Contract Act and Davis-Bacon Act. Terms and conditions often require modification and/or inclusion of additional applicable clauses.

Administration involves further determinations by the CO in relation to termination, wage and labor rates, claims, protest, and appeals. The knowledge and skills required to process these transactions include those of the \$2,500 level, and the areas of construction contracting, service contracting, Federal Information Processing (FIP), resource contracting, labor laws, negotiation techniques, cost and pricing, market conditions, and decision-making techniques.

---

**Exhibit 1B(iii) Continued****LEVEL 1C - \$25,000****AUTHORITY:**

Obligation authority up to \$25,000 on the open market and up to the maximum order limitation (MOL) on priced mandatory or nonmandatory FSS contracts or other schedule contracts for supplies and services. Delivery orders for FIP resources are limited to \$50,000.

**REQUIREMENTS:**

- C Experience--Two years of acquisition experience, including 6 months recent experience in small purchases or simplified purchases.
- C Education--A high school diploma or equivalent.
- C Training--At time of appointment (delegation) successful completion of 100 hours training in government simplified acquisition procedures. (Subject matter same as for Level 1 IB-DR 5001.1).
- C Duties--Fifty percent or more of time is regularly dedicated to purchasing duties.

**DESCRIPTION:**

Simplified acquisition up to \$25,000 involves application of a large majority of the Federal acquisition and related regulations. Competition is required, posting of written solicitations in a public place and, in the case of sole-source, a Sole Source Justification signed by the CO. Many items are fabricated to government specifications, are not locally available, and require written solicitation. Often acquires equipment of a highly technical nature involving electronics, IT resources, and medical applications. Terms and conditions often require development or modification and further determination of applicability such as default, patents or copyrights, advance payments, and cost reimbursement. Administration involves further determinations by the CO in relation to contract changes/modifications, negotiation of equitable adjustments, default termination, settlement of appeal/claims, and inspection/acceptance/ warranties and the use of wire transfer payments. The knowledge and skills required to process these transactions include those of the \$10,000 level. In addition, knowledge of court, GAO, and Agriculture Board of Contract Appeals decisions may be needed to assist in determinations.

**Exhibit 1B(iii) Continued**

**LEVEL ID--SIMPLIFIED ACQUISITION AUTHORITY**

**AUTHORITY:**

Obligation authority up to the simplified acquisition threshold on open market acquisitions. Delivery order authority is up to the MOL on priced mandatory and nonmandatory FSS or other schedule contracts for supplies and services. Delivery orders for FIP resources are limited to \$50,000.

**REQUIREMENTS:**

- C Experience--At least 4 years recent procurement experience in small purchases or simplified purchasing. The applicant must presently be in the GS-1105 or GS-1102 series.
- C Education--Preferably a high school diploma or its equivalent.
- C Training--160 cumulative hours in contracting.
- C Duties--The individual regularly dedicates a minimum of 60 percent of their time to purchasing duties.

**DESCRIPTION:**

Essentially the same as for Level 1C, but must also have knowledge of and experience with sealed bid and negotiated formal contracting methods described in FAR Parts 14 and 15.

---

**SECTION 1C****STANDARDS OF CONDUCT****Basic Principles**

The conduct of the acquisition process requires strict application of the many laws and regulations concerning standards of conduct, conflicts of interest, and disclosure of information. It must be remembered that government service or employment is a public trust requiring government personnel to place loyalty to country, ethical principles, and the law above private gain and other interests. FAR 3.101-1 expresses it this way:

"Government business shall be conducted in a manner above reproach and, except as authorized by statute or regulation, with complete impartiality and with preferential treatment for none. Transactions relating to the expenditure of public funds require the highest degree of public trust and an impeccable standard of conduct. The general rule is to avoid strictly any conflict of interest or even the appearance of a conflict of interest in government-contractor relationships. While many Federal laws and regulations place restrictions on the actions of government personnel, their official conduct must, in addition, be such that they would have no reluctance to make a full public disclosure of their actions."

Government employees are thus charged with the duty to avoid any action which might result in or create the appearance of:

- C Using public office for private gain;
- C Giving preferential treatment to any person;
- C Impeding government efficiency or economy;
- C Losing complete independence or impartiality;
- C Making a government decision outside of official channels or which is not in accordance with applicable published procedures or statutory requirements;
- C Affecting adversely the confidence of the public in the integrity of the government; or,
- C Engaging in criminal, dishonest, infamous, immoral, or notoriously disgraceful conduct, or any conduct prejudicial to the government.

**Gifts, Entertainment and Favors**

As a rule, no government employee may solicit or accept, directly or indirectly, any gift, gratuity, favor, entertainment, food, lodging, loan, or anything of monetary value from anyone who has, or is seeking to obtain, contractual or other business or financial relationships with the employee's agency, conducts operations or activities that are regulated by that agency, or who has interests

which may be substantially affected by the performance or nonperformance of the employee's official duties.

FAR Subpart 3.2 requires that the CO insert in all solicitations and contracts a clause which puts the contractor on notice that its right to proceed under the contract may be terminated if the contractor, its agent, or another representative-

- C Offered or gave a gratuity to an employee of the government; and
- C Intended, by the gratuity, to obtain a contract or favorable treatment under a contract.

AGAR Subpart 403.2 requires that a suspected violation of the gratuities clause be reported immediately in writing to the cognizant CO, who, after reviewing the report for completeness and adding any recommended action, must submit the report to the HCAD (Director, PPD).

## **EMPLOYMENT**

In seeking employment with organizations such as those described above, government employees must be aware that Federal law prohibits certain kinds of employment, and that even where such employment is not prohibited, there is great potential for the appearance of a conflict of interest. Consequently, the employee should seek legal advice with regard to employment which may be prohibited by law, and must not permit the prospect of employment to influence the performance or nonperformance of duties, communicate or use information of particular interest to the prospective employer (even if its available publicly), or indicate, directly or indirectly, that he or she would be able to offer information or special relationships with officials of ARS.

With regard to outside employment, government employees are not permitted to engage in any outside activity which is not compatible with the full and proper discharge of the duties and responsibilities of their government employment such as accepting anything of monetary value where that acceptance may result in, or create the appearance of, a conflict of interest.

## **FINANCIAL CONFLICTS OF INTEREST**

### **Prohibitions**

Employees of the government are not permitted to have a direct or indirect financial interest that conflicts, or appears to conflict, with his or her government duties and responsibilities. Neither are government employees permitted to engage in, directly or indirectly, financial transactions as result of, or relying on, information obtained through government employment, where that information was not made available to the general public.

### **Disqualification**

There are criminal penalties for any employee who participates "personally and substantially" as a government employee in matters in which, to the employee's knowledge, the employee, the employee's spouse, or minor children have a financial interest. "Participation" includes decision, approval, disapproval, recommendation, investigation, or furnishing of advice regarding

numerous types of proceedings, including contracts, claims, and accusations.

Before an employee may participate in a matter to which he or she knows (or should know) that the prohibitions regarding financial interests apply, that employee is required either to divest him or herself of the financial interest or request in writing a determination of the propriety of that participation. The official making the determination has several alternatives depending upon the specific circumstances. They are to:

- C Cause the employee to be relieved from participation and assign it to another person who is not subordinate to the relieved employee; or,
- C Approve the employee's participation upon determining that the participation is not so substantial as to be likely to affect the integrity of the employee's services; or,
- C Recommend reassignment of the employee; or,
- C Direct the employee to divest him or herself of the financial interest if none of the other alternatives is feasible.

### **CONTRACTS WITH GOVERNMENT EMPLOYEES OR ORGANIZATIONS OWNED OR CONTROLLED BY THEM**

Federal Acquisition Regulation Subpart 3.6 prohibits the CO from knowingly awarding a contract to a government employee or to a business concern owned or substantially owned or controlled by one or more government employees except under such compelling circumstances as may be approved by the HCA in accordance with AGAR 403.602.

AGAR 403.603 requires that the CO prepare a written determination and findings for the signature of the HCA. The determination must document compliance with the FAR, specify the compelling reasons for award and be placed in the contract file. Purchasing Agents should consult with their cognizant PAO prior to taking any action with regard to such contract circumstances.

### **PROCUREMENT INTEGRITY**

#### **Source of Policy**

The Office of Federal Procurement Policy Act (Section 27), which became effective on December 1, 1990, prohibits certain actions by contractors and government procurement officials and establishes certain requirements related to preserving integrity in government procurement. The requirements of the act are implemented in FAR 3.104.

#### **Government Officials**

Government officials (FAR 3.104-3) include those employees who are personally and substantially involved in the development, review, or approval of specifications or statements of work for a particular procurement, preparation of a procurement or purchase request for a particular procurement, preparation or issuance of a solicitation for that procurement, evaluation

of bids or proposals for that procurement, selection of sources for that procurement, negotiation of price or terms and conditions for that procurement, and review and approval of the award of a contract or contract modification.

**Prohibited Actions**

- During the conduct of a procurement, competing contractors are prohibited from offering, promising, or discussing future employment with any government official of the agency, or offering, promising, or giving any gratuity or thing of value to a government official, or solicit or obtain from any officer or employee of the agency any proprietary or source selection information regarding that procurement (Subsection 27(a)).
- During the conduct of a procurement, government procurement officials are prohibited from soliciting, accepting, or discussing any promise of future employment or business opportunity with any competing contractor, solicit, accept, receive, or agree to receive any gratuity or other thing of value from any representative of a competing contractor, or disclose any proprietary or source selection information to any person not authorized to receive that information (Subsection 27(b)).
- Criteria are established to permit a procurement official to engage in a discussion with a competing contractor, related to future employment or business opportunity of the procurement (Subsection 27(c)).
- During the conduct of a procurement, no person who is given authorized or unauthorized access to proprietary or source selection information may disclose it to anyone not authorized to receive it (Subsection 27 (d)).
- Post employment restrictions provide that no individual who was a procurement official with respect to a particular procurement may participation behalf of a contractor in any negotiations leading to award, modification, or extension of the contract, or participate personally or substantially in the performance of the contract. These restrictions apply for two years from the last date the individual personally and substantially participated in the conduct, review, approval of award, modification or extension of the procurement (Subsections 27 (f)).